

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of
Request for Review of the
Decision of the
Universal Service Administrative Company by
Brockton Public Schools
Brockton, Massachusetts
Federal-State Joint Board on
Universal Service
Changes to the Board of Directors of
the National Exchange Carriers Association, Inc.
File No. SLD No. 149481
CC Docket No. 96-45
CC Docket No. 97-21

ORDER

Adopted: August 24, 2001

Released: August 27, 2001

By the Common Carrier Bureau, Accounting Policy Division:

1. The Common Carrier Bureau has under consideration a Request for Review filed by Brockton Public Schools, Brockton, Massachusetts (Brockton), on May 22, 2000, seeking review of a decision issued by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC or Administrator). Brockton seeks review of SLD's denial of requests for discounted telecommunications services under the schools and libraries universal service support mechanism. For the reasons set forth below, we grant Brockton's Request for Review in part and remand this matter to SLD.

2. Upon review of the record, we conclude that SLD should not have denied Brockton's request for support for failing to comply with the Commission's competitive bidding requirements. To receive support for discounted services, the Commission's rules provide that, with limited exceptions for existing, binding contracts, an applicant must comply with the Commission's competitive bidding requirements, including the posting of a request for services (FCC Form 470) on SLD's website for 28 days. Because Brockton checked Item 10, in Block 3

1 Letter from David H. Kimball, Brockton Public Schools, to the Federal Communications Commission, filed May 22, 2000 (Request for Review).

2 Section 54.719(c) of the Commission's rules provides that any person aggrieved by an action taken by a division of the Administrator may seek review from the Commission. 47 C.F.R. § 54.719(c).

3 47 C.F.R. §§ 54.504, 54.511(c)(1) (exempting from competitive bidding requirements (1) contracts signed before July 10, 1997, for the life of the contract; and (2) in Year 1 only, contracts signed between July 10, 1997, and the opening of

of its FCC Form 470, indicating that it sought support only for services provided pursuant to an existing, binding contract, SLD did not post Brockton's request for services to SLD's website. A careful review of the record reveals that the contract for which Brockton seeks support meets the limited exception for existing, binding contracts signed before July 10, 1997.<sup>4</sup> Brockton's contract with New England Telephone and Telegraph was signed on November 14, 1993, for a term of ten years.<sup>5</sup> As such, Brockton was not required to comply with the Commission's competitive bidding requirements.

3. We do not agree with SLD that Brockton violated the Commission's competitive bidding requirements and, therefore, should be denied requested discounts, simply because it indicated on its FCC Form 471 that it was seeking discounts for services provided pursuant to a tariff.<sup>6</sup> Under the facts presented here, it is clear that Brockton sought discounts for an existing, binding contract signed before July 10, 1997. Such contracts are exempt from the Commission's competitive bidding requirements. Brockton correctly indicated on its FCC Form 470 that it sought support for services provided pursuant to an existing, binding contract with New England Telephone and Telegraph that was signed on November 14, 1993.<sup>7</sup> Despite the fact that Brockton incorrectly placed the letter "T" for tariff on its FCC Form 471, upon review of the record, it is evident that Brockton did not request discounts for services provided pursuant to a tariff. We note that the instant appeal is distinguishable from prior appeals we have denied for failing to comply with the Commission's 28 day competitive bidding requirement, in that Brockton actually seeks discounts for a contract that meets one of the exceptions described in section 54.511(c) of the Commission's rules for existing, binding contracts.<sup>8</sup>

4. Indeed, based on the record, SLD should have been able to discern that Brockton had an exempt contract during its review of the appeal. The FCC Form 470 that Brockton cited to in its appeal to SLD, clearly indicates that Brockton had an existing, binding contract with

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the Administrator's website on January 30, 1998); *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order, DA 99-1773, 1999 WL 680424 (Com. Car. Bur. 1999), para. 10 (permitting support for contracts signed in a prior funding year pursuant to the Commission's competitive bidding requirements).

<sup>4</sup> See 47 C.F.R. § 54.511(c)(1)(i); see also *Cochrane-Fountain City School District*, CC Docket Nos. 96-45 and 97-21, Order, DA 00-1045, para. 4 (rel. May 17, 2000) (discussing the exceptions to the Commission's competitive bidding requirements for certain existing, binding contracts).

<sup>5</sup> See Request for Review at 45.

<sup>6</sup> Services ordered pursuant to a tariff do not constitute a "pre-existing contract." The instructions for Item 10 in Block 3 of FCC Form 470 state that "[i]f you are purchasing telephone service at tariffed rates and have not signed a binding contract, you cannot treat this arrangement as an existing contract." FCC Form 470, "Instructions for Completing the Schools and Libraries Universal Service Description of Services Requested and Certification Form (FCC Form 470)" at 7.

<sup>7</sup> See FCC Form 470, Brockton Public School District, filed February 8, 1999.

<sup>8</sup> See, e.g., *Anderson Community School Corporation*, CC Docket Nos. 96-45 and 97-21, Order, DA 00-2072 (Acc. Pol. Div. rel. Sep. 11, 2000); *Richmond County Public Schools*, CC Docket Nos. 96-45 and 97-21, Order, DA 00-2047 (Acc. Pol. Div. rel. Sep. 8, 2000); *Wilmington CUSD #209-U*, CC Docket Nos. 96-45 and 97-21, Order, DA 00-1821 (Acc. Pol. Div. rel. Aug. 10, 2000). In each of these cases the applicant did not meet one of the enumerated exceptions.

New England Telephone and Telegraph that was signed before July 10, 1997.<sup>9</sup> Moreover, Brockton's Letter of Appeal to SLD stated that the contract in place with New England Telephone and Telegraph is "multi-year contract."<sup>10</sup> Our finding is consistent with SLD's own policy that, if an applicant made a mistake completing its FCC Form 471 and there was other information contained in the application or provided during the Program Integrity Assurance (PIA) review process that presented the correct information, SLD will grant the appeal so long as the applicant points out the mistake, and demonstrates how SLD could have reasonably ascertained the true nature of the information.<sup>11</sup> Because those facts are evident here, we find it appropriate to reverse SLD and remand Brockton's application for further consideration.

5. ACCORDINGLY, IT IS ORDERED, pursuant to authority delegated under sections 0.91, 0.291, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 54.722(a), that the May 22, 2000, Request for Review filed by Brockton Public Schools, Brockton, Massachusetts, IS GRANTED and REMANDED to the extent provided herein. We direct the Schools and Libraries Division to review Brockton's funding application and, if warranted, issue a revised Funding Commitment Decision Letter in accordance with the above-stated decision.

FEDERAL COMMUNICATIONS COMMISSION

Mark Seifert  
Deputy Chief, Accounting Policy Division  
Common Carrier Bureau

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<sup>9</sup> See FCC Form 470, Brockton Public School District, filed February 8, 1999.

<sup>10</sup> See Letter from David H. Kimball, Brockton Public Schools, to the Schools and Libraries Division, filed October 26, 1999. In order to confirm this fact, SLD simply could have asked Brockton for a copy of the contract during the PIA review. There is no indication in the record that such a request was made.

<sup>11</sup> See SLD web site, <<http://www.sl.universalservice.org/reference/AppealsSLDGuidelines.asp>>. The PIA review process examines applicants' FCC Forms 471 and other documentation to ensure that the discounts recipients obtain are for eligible services, provided to eligible entities, for eligible uses. See SLD web site, <<http://www.sl.universalservice.org/reference/6pia.asp>>.